

# EXECUTIVE BRANCH ETHICS COMMITTEE



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Patricia B. Quigley  
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## Advisory Opinion

2007-001

### Question Presented

May a member of a professional licensing or regulatory board/commission who is a member of the regulated profession or who is otherwise subject to the regulations set by the board/commission vote on the adoption or amendment of such regulations without violating the conflict of interest prohibition of RSA 21-G:22?

### Summary Answer

Yes. Unless the member of the board/commission has a specific conflict of interest arising from the issue being considered, he or she may participate in votes on regulations.

### Legal Authority

RSA 21-G:22

### Analysis

The Code of Ethics established under RSA chapter 21-G requires that public employees and public officials avoid conflicts of interest. A "[c]onflict of interest" is defined as "a situation, circumstance, or financial interest which has the potential to cause a private interest to interfere with the proper exercise of a public duty." RSA 21-G:21, II. The statute prohibits public employees and public officials from participating "in any matter in which they, or their spouse or dependents, have a private interest which may directly or indirectly affect or influence the performance of their duties." RSA 21-G:22.

In responding to this inquiry, the Ethics Committee initially looked at whether members

of the board/commission are subject to the RSA 21-G conflict of interest provisions. Because the definition of "public employees" includes any person acting on behalf of the governor or an agency while engaged in state business and because an "agency" is defined to include any board or entity of the executive branch, board members are subject to these provisions. See RSA 21-G, IV; RSA 21-G:21, I.

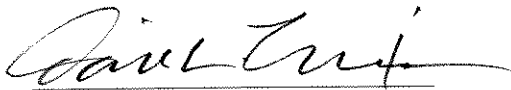
We reviewed the conflict of interest provisions in light of the issue presented, i.e. whether particular individuals, because of their status as regulated persons or private persons providing services to the regulated entities, would be unable to serve on the Board as a result of a prohibited conflict of interest. We are of the opinion that the professional position held by a Board member does not, in and of itself, result in a prohibited conflict of interest. Membership on Boards and Commissions is defined by statute. Typically, a set number of members cannot be regulated persons and a set number of members are expressly required to be regulated persons. The legislature would not have directed that a Board or Commission include regulated persons if those members could not fully participate on the Board or Commission merely because of their status as regulated persons.

Particular situations, circumstances, or financial interests, however, might arise during the course of a member's service on the Board that could create a prohibited conflict of interest requiring remedial action, such as recusal from deliberations in a particular matter. For example, a situation might arise in which a particular Board member or the member's employee or employer is subject to an administrative action seeking revocation or suspension of a license under existing regulations while at the same time the Board is considering rulemaking on those regulations. This situation would create a conflict of interest requiring the subject Board member to recuse herself or himself from participating in the rulemaking on those regulations.

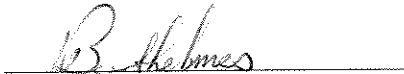
### **Conclusion**

The fact that an individual Board or Commission member is subject to regulation by that Board or Commission, standing alone, does not constitute a conflict of interest that would prevent the member from participating in decisions on regulations.

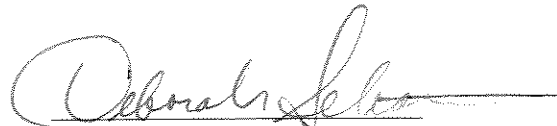
This Advisory Opinion is issued by the Executive Branch Ethics Committee on February 21, 2007, pursuant to RSA 21-G:30, I (c).



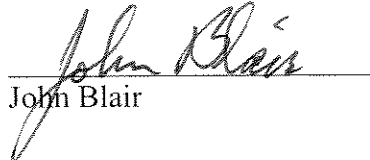
Chairman David L. Nixon



John Barthelmes



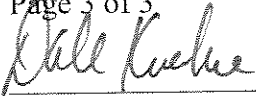
Deborah Schachter



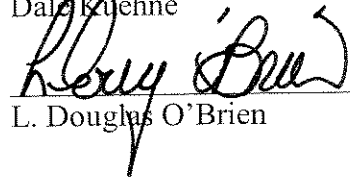
John Blair

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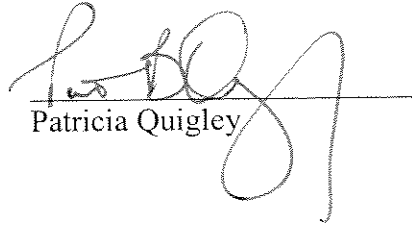
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